

From: Lisa Sinclair Smith [gsyn@earthlink.net]  
Sent: Tuesday, December 02, 2003 6:41 PM  
To: adoptionregs@state.gov  
Subject: comments on the Hague regs

Dear Sir/Madam,

My name is Lisa Sinclair Smith and I live in Novato, CA. I also own a flat in Moscow, Russia and have worked as a Russian adoption facilitator in Russia since 1993 for two different US adoption agencies. During this

time, I have completed over 500 Russian adoptions with my team of Russian coordination staff and translators. I have worked in 12 different regions of Russia, and I have sub-contracted employment to 7 different Russian coordinators 'under' me. All along, our focus has been the waiting child, with over half our adoptions being of orphans over the age of 5 years old. We have also helped several dozen physically disabled orphans become adopted since 1993.

I have read the proposed State Department regulations in regard to the Hague Convention on Intercountry Adoption; Accreditation of Agencies; Approval of Persons; Preservation of Convention Records; Proposed Rules and would like to make the following recommendations and comments as follows:

Regarding SUBPART B - section 96.39 - subpart (d) - which states: "The agency or person does not require a client or prospective client to sign a blanket waiver of liability in connection with the provision of adoption services in Convention cases" - I AGREE with this statement IF insurance companies would allow both American and Russian adoption facilitators like myself to purchase liability insurance, but I DISAGREE with this regulation if the insurance industry does not give us facilitators the option to purchase insurance at a reasonable price, as they never have.

I believe adoption agencies should also be made accountable to cover 'independent contractors' like myself with insurance. The two adoption agencies I have worked with the past 10 years have not done covered me.

I myself, being an American, yet at the same time, being a Russian adoption facilitator in Russia where I own a flat and have lived for the

better part of 10 years, have been unable to purchase business insurance, professional liability insurance or adoption agency insurance

of any kind since I have been in this profession because insurance companies, when they find out I facilitate Russian adoptions, want nothing to do with me. They claim there is no 'category' I fall into because I am not an adoption agency nor am I a social worker.

At the same time, I know of two families who have sued the agencies I have worked for concerning a Russian adoption of theirs in which they have claimed all sorts of things that were not accurate. They claimed 'fraud' and that the 'Russian facilitator committed lies, deceit and non-disclosure of information' about their child prior to the child's adoption. In fact, none of their accusations were true, but the defense it cost my agency to prove they were not true cost my agency a fortune. In fact, what really happened, I believe, was those families

had marital problems prior to their adoption and thought adopting a Russian child would solve those problems. In fact, that didn't happen in both the marriage as well as the adoption fell apart. Not wanting to admit their own failings and wanting to find a scapegoat instead, they sued the agency in an attempt to recover damages.

Agencies as well as facilitators have a right to protect themselves from well intentioned adoptive parents who decide to sue. Some adoptive parents, while well intentioned, suffer from significant marital and/or personal issues which homestudy agency social workers often do not identify, thus resulting in those couples going forward to adopt when in fact they should not be permitted to.

What blame does the homestudy agency social worker have in the whole story? Why should facilitators and agencies NOT require families to sign

a liability waiver statement as a guarantee that those families realize what they are doing and take personal responsibility for adopting a child

internationally, with all the ramifications that adoption entails? Having helped over 500+ Russian orphans become adopted during the last 10 years, I am proud of what I have done and do not wish to leave my profession. At the same time, my profession offers me as a facilitator no protection at all. As well, the agency I work with will have little protection as well if you do not permit some sort of liability waiver to

be required to be signed by parents so they realize the seriousness of what they are about to embark upon - the adoption of a child.

2. Regarding Subpart B - section 96.46 - B4 - "Requires the foreign supervised provider to compensate its directors, officers and employees provide intercountry adoption services on a fee-for-service, hourly wage, or salary basis, rather than based on whether a child is placed for adoption or on a similar contingent fee basis". I do NOT agree with

this suggestion because I know it simply will not work because adoption coordinators, in Russia, have for 10 years worked on a per case basis and those who are most successful and help the most children do so because they are paid per case. I suspect that half as many Russian adoptions will happen if employees are paid on a salary basis, because this is not what they are used to. In general, whether employees are paid on a per case basis or a salary basis will have no effect on the professional performance of the employee. They will continue to perform their work, simply in an un-motivated fashion (which could result in sloppy paperwork) rather than in a motivated fashion. Turning our profession into a 'socialist' compensation scheme will not result in more ethical practices; it will result in more lazy practices. It will have the opposite effect that you intend. Even if you don't intend for it to.

3. Regarding Subpart B - section 96.46 - C1-2 - "The agency or person, when acting as the primary provider and using foreign supervised

providers to provide adoption services in other Convention countries, does the following in relation to risk management:

(1) Assumes tort, contract, and other civil liabilities to the prospective adoptive parents for the foreign supervised provider's provision of the contracted adoption services and its compliance with standards in this subpart F; and

Maintains a bond, escrow account, or liability insurance in an amount sufficient to cover the risks of liability arising from its work with foreign supervised providers"

THIS SECTION IS TERRIFIC! THANK GOODNESS we foreign facilitators will be protected. However, the only suggestion I would make here is that you require the adoption agencies to assess a specific fee to both the foreign facilitator AND the local homestudy agency (who has written the

homestudy of the family) towards contributing towards this insurance, which I'm sure is very expensive. I'd suggest a flat fee to be charged, the facilitator per case (I realize this will raise overseas fees, so be it), as well as a flat fee per homestudy written to the homestudy agency (who needs to have MUCH more accountability they they do now concerning each homestudy they write).

Please contact me should you have any questions on my above comments.

Yours Sincerely,

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